

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case Nos. 08-13555 (JMP)

08-01420 (JMP)(SIPA)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.

Debtors.

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In the Matter of:

LEHMAN BROTHERS INC.,

Debtor.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

February 11, 2009

10:01 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

I. UNCONTESTED MATTERS:

HEARING re Case Conference: (A) Presentation of Proposed  
International Case Protocol; (B) Examiner's Proposed Work Plan

HEARING re Application to Employ Jenner & Block LLP as Counsel  
to the Examiner

HEARING re Examiner's Motion for an Order Directing the  
Production of Documents and Authorizing the Examinations of the  
Debtors' Current and Former Officers, Directors and Employees,  
and Other Persons and Entities

HEARING re Motion of Green Tree Servicing LLC for Bank Order  
Pursuant to Sections 105(d)(2)(A) and 365 of the Bankruptcy  
Code Directing Debtor Lehman Brothers Holdings Inc. to Assume  
Flow Subservicing Agreement and, in the Interim, for Order  
Granting Adequate Protection Pursuant to Section 364(c) of the  
Bankruptcy Code

HEARING re The Midwest Independent System Operators Motion for  
(I) Relief from the Automatic Stay to Exercise Setoff Rights  
Pursuant to Section 553 of the Bankruptcy Code and (II) Other  
Related Relief

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HEARING re Debtors' Motion for an Order Pursuant to Section 365  
of the Bankruptcy Code Approving the Assumption or Rejection of  
Open Trade Confirmations

HEARING re Notice of Debtors' Second Motion for an Order  
Pursuant to Section 365 of the Bankruptcy Code Approving the  
Assumption of Open Trade Confirmations

SECURITIES INVESTOR PROTECTION CORPORATION PROCEEDINGS:  
III. UNCONTESTED MATTERS:

HEARING re Trustee's Motion for Entry of an Order Pursuant to  
Section 365 of the Bankruptcy Code and Federal Rules of  
Bankruptcy Procedure 2002, 6006, and 9019 Authorizing the  
Assumption and Assignment of Debtors Rights and Obligations  
under a Lease of Nonresidential Real Property Located at 3000  
Sand Hill Road, Menlo Park, California

HEARING re Notice of Presentment of Stipulation and Agreed  
Order Resolving Objection to Assumption and Assignment of  
Certain Agreements with CA, Inc.

IV. CONTESTED MATTERS:

HEARING re Trustee's Motion for an Order, Pursuant to Section  
365(d)(4) of the Bankruptcy Code, Extending Time to Assume or  
Reject Unexpired Leases of Nonresidential Real Property

HEARING re Trustee's Motion under Fed. R. Bankr. P. 9019(a) for  
Approval of Settlement and Compromise

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Be seated. Good morning.

MR. MILLER: Good morning, Your Honor.

THE COURT: Good morning, Mr. Miller. How are you?

MR. MILLER: Good, sir. How are you?

THE COURT: I'm fine, thanks.

MR. MILLER: If Your Honor please, it's not a very long calendar but in the interest of efficiency and economics, Your Honor, I think it might be expedient to take the examiner's matters first.

THE COURT: That'll be fine.

MR. MILLER: Mr. Valukas?

MR. VALUKAS: Good morning, Your Honor.

THE COURT: Good morning.

MR. VALUKAS: Your Honor, we have three matters before Your Honor. One was the first matter which is the matter of an order authorizing the retention of Jenner & Block as counsel for the examiner. I've searched long and hard and decided on Jenner & Block as my recommendation. And we don't have --

THE COURT: Sounds like the first and last choice for you.

MR. VALUKAS: If I want to return to Chicago, yes, Your Honor.

THE COURT: Right.

1 MR. VALUKAS: There are no objections to that.

2 THE COURT: There are no objections. I've reviewed  
3 the application and unless there are comments from the U.S.  
4 trustee's office, I'm prepared to approve it.

5 MR. VELEZ-RIVERA: We're okay, Your Honor.

6 THE COURT: Fine. It's approved.

7 MR. VALUKAS: Thank you, Your Honor. The second  
8 would be a motion authorizing the issuance of a subpoena  
9 pursuant to Rule 2004. Your Honor, we have the motion. There  
10 are no objections that were filed in connection with this  
11 matter and we'd ask that the Court enter that order.

12 THE COURT: That will be entered as well. I approve  
13 it.

14 MR. VALUKAS: All right. The third, Your Honor, is  
15 the proposed plan order for purposes of the investigation which  
16 we have presented to Your Honor. Your Honor, we have had the  
17 opportunity of meeting with all of the parties privately, that  
18 is, say, individually, as well as in a group in trying to craft  
19 an order which we thought would produce the results which the  
20 parties asked for.

21 There are no objections. There is, however, a  
22 statement made by the debtor-in-possession as their concerns  
23 that they would like to have that order include their  
24 involvement in the investigation. That is something to which  
25 we object. I think the order as we propose is the way it



1 should be.

2 Putting aside the issue of whether they do or do not  
3 have trustee status, the issue here is that much of the  
4 activity that would be subject to the investigation would be  
5 activity which would be -- which involve, among potentially  
6 involved, which doesn't suggest anybody did anything wrong, the  
7 board of directors of the debtor and trustee, the individuals  
8 who would be subject to the investigation would be, if they  
9 were permitted to have access as we went along -- be in a  
10 position where their lawyers would be working side by side with  
11 us while we conduct the investigation. I believe that would  
12 interfere with our ability to conduct this independently and  
13 interfere with our ability to relate to a number of the parties  
14 here who are offering cooperation with us.

15 So we would ask that the order be entered as we have  
16 suggested it.

17 THE COURT: I have read your letter. I've looked at  
18 the order and I've looked at your preliminary work plan. I  
19 note that the position of the debtor appears to be stated  
20 verbatim within your letter. But I'm going to ask Mr. Miller  
21 or anybody else on his team who's involved in this if there are  
22 any comments you think appropriate now for the record.

23 MR. MILLER: Thank you, Your Honor. Your Honor, we  
24 applaud the ethics that the examiner has made to reach a  
25 consensus on the work plan. As Mr. Valukas has set forth in

1 the letter, we've taken the position that the debtors-in-  
2 possession, Your Honor, operate qui-trustee under the  
3 Bankruptcy Code. This is an enormous case. To ask the debtor-  
4 in-possession, basically, Your Honor, to wait the nine months  
5 until the examiner is finished with his examination, there are  
6 processes which the debtor-in-possession has to be -- debtors-  
7 in-possession -- excuse me, Your Honor -- have to be involved  
8 in. There's going to be the filing of schedules very shortly.  
9 There will be a bar date. The reconciliation of claims. And  
10 what we provided, Your Honor, if you will look at Mr. Valukas'  
11 letter, we said in the last sentence "To the extent that there  
12 are any particular areas as to which the examiner believes that  
13 participation by the debtors-in-possession would be  
14 counterproductive, he may request that the debtors-in-  
15 possession not participate and they will defer to the  
16 examiner's judgment that such nonparticipation is necessary to  
17 the integrity of the investigation."

18 What we are talking about, Your Honor, is a central  
19 depository of documents which the examiner will accumulate,  
20 many of which, Your Honor, will be coming from the debtors  
21 themselves. Others will be coming from other places, Your  
22 Honor. The LBI trustee is being given the status, Your Honor,  
23 of parity with the examiner. The LBI trustee has complete  
24 access to the central depository. The LBI trustee, I assume,  
25 Your Honor, is going to participate in the depositions and the

1 interviews.

2           What is going on in this connection, Your Honor, is  
3 critical also to the administration of the estate. We are not  
4 asking to interfere with the investigation. We are deferring  
5 to the judgment of the examiner as to when we can participate.  
6 But having access, Your Honor, to these documents -- for  
7 example, let's take JPMorgan Chase, Your Honor. A very  
8 substantial relationship between LBHI and its subsidiary and  
9 affiliate debtors-in-possession with JPMorgan. We are in  
10 constant negotiations with JPMorgan which is holding a very  
11 substantial amount of collateral that the debtors-in-possession  
12 may claim should be returned to the estate. The information  
13 that is being gathered, and this should be a cooperative  
14 effort, should be shared to the extent it can be shared but Mr.  
15 Valukas will make a decision whether we should have access to  
16 that. But we shouldn't be precluded, Your Honor.

17           And looking at other cases, Your Honor, such as  
18 WorldCom where Governor Thornburg was the examiner, he allowed  
19 the debtor-in-possession to attend interviews, to participate  
20 in depositions. We don't want to interfere with the  
21 investigation, Your Honor. But having access to raw materials  
22 is very important to the administration of the estate. And as  
23 I said, and I don't want to keep repeating it, Mr. Valukas will  
24 exercise the judgment as to when we can have access. But to  
25 create over a nine month period of time a central depository

1 with thousands of documents, maybe millions, I don't know, some  
2 of which will be very pertinent to what Mr. Marsal is doing in  
3 administering this estate. And I have to say, Your Honor, this  
4 is a somewhat unique estate because Mr. Marsal came in after  
5 the petitions were filed, essentially. He is not beholden. He  
6 is not the old management. He is conducting his own  
7 independent investigations. And the materials that the  
8 examiner is going to gather will bear on that, will be part of  
9 the administration of this estate. And it will be very  
10 important, Your Honor, in connection with claims reconciliation  
11 which we have to get to if we're going to meet Mr. Marsal's  
12 projected timetable of eighteen months to two years to propose  
13 a plan of reorganization for some of these debtors.

14 So, Your Honor, we're not trying to interfere in the  
15 investigation. Limited access. We're not going to get the  
16 same access as the LBI trustee, which I really think we should  
17 have, but we're not going to get that. But simply to say that  
18 we don't have any access to this is just not appropriate, Your  
19 Honor.

20 THE COURT: Okay. I understand that position. I'd  
21 like to hear, if Mr. Valukas is prepared to actually respond --

22 MR. VALUKAS: I am.

23 THE COURT: -- to what you've just heard. And I'll  
24 comment after I've heard your remarks.

25 MR. VALUKAS: I will. Your Honor, the order that we

1 propose does provide that we will consider sharing information  
2 to the extent that we determine that it will not adversely  
3 impact the investigation. Mr. Miller describes Mr. Marsal's  
4 role and Mr. Marsal's role is also subject to the investigation  
5 which Your Honor has asked us to undertake. What took place  
6 after September 15th is part of the inquiry. In fact, it's a  
7 significant part of the inquiry. The issue as to what the  
8 board did or didn't do in terms of its fiduciary duties is a  
9 critical part of the investigation. Mr. Marsal reports to the  
10 board which should be the subject of that investigation. It  
11 would be a very unusual investigation which involved having the  
12 lawyers for or the parties who are under investigation and  
13 their lawyers working side by side in connection with that. We  
14 have offered to all of the parties the opportunity, in  
15 appropriate circumstances, to share information, including  
16 documents, if we think it will not interfere with the  
17 investigation.

18 We have other parties which the Court has advised us  
19 that we need to consult with and we have under any other  
20 circumstances, which includes the U.S. Attorney's Office and  
21 the SEC. Our ability to have unfettered discussions with them,  
22 share information with them going back and forth, can only be  
23 impeded by having at least part of the subject of our  
24 investigation -- I'm not suggesting their investigation but the  
25 board and the debtors-in-possession -- that those individuals

1 would be part of the investigation as it went along can only  
2 slow the investigation. We'll spend our time negotiating.

3 What I've said to Mr. Miller and the others -- and I  
4 do understand the need for coordination. That's why we sat  
5 down with the SIPA trustees and worked out a plan which will  
6 not duplicate each other's efforts -- is that as we go along,  
7 if there are specific things for which they wish access, we  
8 will consider that and we will try to find a way to facilitate  
9 it. But we don't want to start out in the beginning where  
10 they're side by side with us and then we have to say we'll stop  
11 at this point, you can't have that information. It will not  
12 work.

13 THE COURT: Okay.

14 MR. ARENA: Your Honor, may I be heard?

15 THE COURT: Surely.

16 MR. ARENA: Good morning, Your Honor. Thomas Arena,  
17 Milbank Tweed for the committee. Your Honor, we view ourselves  
18 as similarly situated to the debtor in this issue but we come  
19 out in a slightly different place. Like the debtor, the  
20 committee obviously has statutory obligations that it needs to  
21 discharge with respect to the creditors in terms of consulting  
22 with the debtor to administer the estates and also to  
23 investigate potential claims.

24 What we've told the examiner and his counsel is this.  
25 We obviously want to work with the examiner. We do not want to

1       impede the examiner's examination in any way. But we do want  
2       to make clear to the Court, as we've made clear to the  
3       examiner, that we're reserving our right to come back before  
4       the Court to seek an application to obtain access to the  
5       document depository on an earlier basis than the examiner might  
6       be wishing to give us and also to seek more formal coordination  
7       with respect to interviews of witnesses or Rule 2004  
8       examinations.

9               So, for now, Your Honor, we've agreed to consent to  
10       the work plan but subject to a very big caveat which is we may  
11       be back before you because, frankly, Your Honor, we will seek  
12       access -- we'd like to seek access to the document depository  
13       sooner rather than later. We're hopeful that we'll ultimately  
14       be able to work this issue out with the examiner but we may be  
15       back before you.

16               Just one other thing to note, which is in the event  
17       that Your Honor were to give the debtor access to the document  
18       depository and to permit the debtor to participate in the  
19       protocol, we obviously would be making an application in short  
20       order to be similarly situated to the debtor in that regard.

21               THE COURT: Understood.

22               MR. ARENA: Thank you.

23               THE COURT: Are there any other parties who  
24       participated in the meet and confer session that led to the  
25       Jenner & Block letter to me of February 6th who wish to be

1 heard at this time? Happily, apparently, no one else does.

2 But Mr. Miller --

3 MR. MILLER: May I just say something, Your Honor?

4 THE COURT: -- is coming in for last licks.

5 MR. MILLER: Your Honor, I would just note that Your  
6 Honor has already authorized the creditors' committee to  
7 conduct Rule 2004 examinations with respect to JPMorgan Chase.

8 THE COURT: Correct.

9 MR. MILLER: There are other applications for Rule  
10 2004 examinations which are not going to be determined today.  
11 But there are ongoing other investigations and other activities  
12 besides the examiner besides which, Your Honor, this is a  
13 somewhat unique examiner in the context that most examiners are  
14 appointed and engaged to look at activities that occurred pre-  
15 Chapter 11. That's the function of an examiner under the  
16 Bankruptcy Code. This examiner has a further responsibility,  
17 to look into the Barclays transaction and transactions that may  
18 have occurred between the 15th and the 22nd or the filing dates  
19 of certain of the subsidiaries. That's a different thing.

20 Now, those areas, Your Honor, to the extent the  
21 examiner may want to investigate those, they can be fenced off  
22 or re-fenced or whatever the appropriate word is. That should  
23 not limit the debtors-in-possession and it's appropriate maybe  
24 for the creditors' committee to have access to other documents.  
25 We're not asking to participate in all the interviews and all



1 the depositions. But there are going to be depositions and  
2 interviews on general subjects. And that's what we're asking  
3 for, Your Honor. Thank you.

4 THE COURT: Okay. In connection with my  
5 consideration of the application for the appointment of the  
6 examiner, one of my principal concerns, and I think I was  
7 fairly clear on expressing this during the hearing, was to make  
8 this as efficient as possible, to minimize duplication of  
9 effort and to avoid having the examiner step on the toes of  
10 others or to have others step on the toe of the examiner.

11 I am impressed with the letter that I received from  
12 Mr. Byman of Jenner & Block dated February 6th along with the  
13 preliminary work plan proposed by the examiner. I am mindful  
14 of Mr. Miller's concerns. This is an unusual circumstance in  
15 that Mr. Marsal was appointed to be, in effect, the CRO,  
16 responsible officer independent fiduciary in his own right. We  
17 have the committee also with fiduciary duties owed to creditors  
18 involved in an examination and an investigation. We have the  
19 SIPA trustee with a statutory obligation to conduct an  
20 examination. And we have the examiner recently appointed with  
21 a specified charge which is quite broad. Additionally, there  
22 are still pending within the case a number of adjourned motions  
23 for 2004 discovery requested by various individual creditors.

24 I am satisfied, based upon my review of the  
25 submissions on behalf of Mr. Valukas as examiner, that the

1 proposed preliminary work plan represents a reasonable basis  
2 for the examiner to begin and conduct his work. But I am also  
3 satisfied, based upon Mr. Valukas' remarks made this morning in  
4 open court and his demeanor in making those remarks, that this  
5 is a process that is somewhat fluid. It is extremely difficult  
6 as a conceptual matter to predetermine in advance how parties  
7 are going to act with each other in matters of this  
8 significance and complexity. I'm satisfied that Mr. Valukas,  
9 as examiner, will exercise reasonable and informed discretion  
10 in deciding whether and when to share information with the  
11 debtor-in-possession.

12 I hear him loud and clear, however, in saying that he  
13 believes it is inappropriate at the outset to have the subject  
14 of the examination directly involved in the examination. For  
15 that reason, even though I understand that Mr. Miller, on  
16 behalf of his client, is making a reasoned argument that a  
17 debtor-in-possession is not to be distinguished from a SIPA  
18 trustee in terms of the fiduciary duties owed to creditors and  
19 the obligations undertaken. I nonetheless believe that for  
20 purposes of getting this process started that the largely  
21 consensual preliminary work plan that has been proposed  
22 represents a reasonable and appropriate blueprint for the  
23 conduct of this investigation.

24 For that reason, to the extent that Mr. Miller's  
25 remarks and the quoted objection, which is really an informal

1 one, which appears in the letter that I have reviewed,  
2 constitute objections to the preliminary work plan, those  
3 objections are overruled. Nonetheless, I believe that the  
4 spirit of cooperation, which has produced this extremely  
5 flexible document, is one that I believe should continue and  
6 that it makes good sense for this to be a work in progress that  
7 is modified as appropriate and that, like many blueprints,  
8 involve some field work to make the project appropriately  
9 complete.

10 For that reason, I'm going to approach this  
11 empirically and assume that the examiner and the other parties  
12 in interest who have participated in good faith to generate  
13 this plan will continue to talk to each other, will approach  
14 issues with an open mind and will, as appropriate, make  
15 adjustments.

16 I'm prepared to approve the preliminary work plan in  
17 the form that it has been submitted and incorporate for  
18 purposes of my approval the general remarks that I've made here  
19 this morning.

20 MR. MILLER: I believe, Your Honor, there is an  
21 order --

22 MR. VALUKAS: There are two orders, Your Honor, I  
23 have in connection with the appointment of Jenner & Block and  
24 the Rule 2004 motion which I have. We'll have to modify the  
25 order which we have drafted to incorporate the last reference,

1 Your Honor.

2 THE COURT: Just for dealing with the pieces of paper  
3 that we have to manage after each one of these hearings, and  
4 this is a sign of cooperation between the debtor and the  
5 examiner, my suggestion is that you hand those documents to Mr.  
6 Miller and that Mr. Miller act as the custodian for purposes of  
7 at the end of the hearing passing up everything that we need to  
8 consider for entry today.

9 MR. VALUKAS: Delighted, Your Honor.

10 THE COURT: Thank you.

11 MR. MILLER: That's a responsibility, Your Honor.

12 THE COURT: I'm sure you can handle it.

13 MR. MILLER: I don't know, Your Honor. After going  
14 down in flames, my partner here says I should leave.

15 Your Honor, just for the record, we note that two  
16 additional Chapter 11 petitions were filed on Monday for LB  
17 Rose Ranch LCC and Structured Assets Securities Corporation and  
18 in due course, Your Honor, we will bring on the motions to  
19 incorporate those into the administrative orders.

20 THE COURT: Fine.

21 MR. MILLER: At the omnibus hearing, Your Honor, of  
22 January 14th, Your Honor inquired as to global protocols and we  
23 have a report for Your Honor in the context of a status  
24 conference, I would call it, and Mr. Perez and Mr. Ehrmann from  
25 Alvarez & Marsal will present that.

1 THE COURT: Fine. Just so I'm clear that people who  
2 are in court have access to the information, I was sent last  
3 evening electronically a February 11 slideshow --

4 MR. PEREZ: Yes, Your Honor.

5 THE COURT: -- and a February 10 draft of a proposed  
6 cross border insolvency protocol. I just want to make sure  
7 that these documents are generally available in court.

8 MR. PEREZ: Your Honor, they are. We have copies  
9 available. Last night at the same time that we submitted it to  
10 chambers, we submitted it to the various parties in interest  
11 electronically as well. In addition, Your Honor, they're  
12 posted to the Lehman website. So it's all there. It's  
13 available. We have not filed anything. This is a prelude to  
14 filing something but, at this point, this is really in the  
15 nature of a status conference.

16 THE COURT: I understand. This is informational  
17 only.

18 MR. PEREZ: Informational only. Your Honor, my name  
19 is Alfredo Perez on behalf of the debtors. And as a result of  
20 the various comments that were made at the last hearing, we  
21 thought it would be appropriate to basically inform the Court  
22 and the parties as to the very significant steps that have been  
23 taken all along and the further, more ambitious, steps that we  
24 intend to take. The purpose of the presentation, as the Court  
25 indicated, is really for informational purposes, to really tell

1 the Court and the parties that there's been tremendous amount  
2 of work done in there -- Mr. Ehrmann, in particular, who kind  
3 of heads that effort, will go through the actual work that has  
4 been done. But there's been work both done on the legal side  
5 as well as a lot of work done on the business side to deal with  
6 the various topics.

7 Your Honor, part of our goal here is to attempt to  
8 bring together a multilateral protocol. As the Court is well  
9 aware, there aren't very many multilateral protocols. Most  
10 protocols are bilateral protocols. There's one in this court,  
11 at least one that I know of that this Court has signed, and  
12 there have been many instances of bilateral protocols but very  
13 few multilateral protocols.

14 THE COURT: You may be alluding to the protocol that  
15 I approved in the Quebecor case.

16 MR. PEREZ: Exactly, Your Honor. So, Your Honor,  
17 what we would propose to do, and Mr. Ehrmann can speak to what  
18 has happened, but what we would propose to do is following this  
19 hearing continue the consultation process directly, as we've  
20 already done, with the various administrators and receivers.  
21 There are really four or five really key ones that control the  
22 bulk of the assets -- in an effort to come back to the Court  
23 with what I would hope to be a largely consensually document  
24 that would allow -- that would change the focus of the case  
25 from what it was in the first couple of months to really what

1 it needs to be in order to achieve Mr. Marsal's goal and that  
2 really has to do with the claims process and with the  
3 reconciliation of the intercompany's accounts. I mean, this is  
4 a very complex situation and we really need to think outside  
5 the box in order to be able to do that.

6 So to that extent, Your Honor, we obviously welcome  
7 everyone's comments. We would welcome the parties' comments.  
8 I'm sure that we will hear from parties in due course with  
9 respect to this. And at some appropriate time in the future,  
10 we'll come back with an actual formal motion seeking the  
11 Court's approval. We have not filed any of this on the record  
12 but it is available on the website.

13 Your Honor, I'd like to introduce Mr. Ehrmann who  
14 I've proffered his testimony before but Mr. Ehrmann is managing  
15 director at Alvarez & Marsal. He has a degree from the  
16 University of Paris, a law degree, and he's licensed in New  
17 York as well to practice here. Thank you, Your Honor.

18 THE COURT: Fine. Mr. Ehrmann?

19 MR. EHRMANN: Good morning, Your Honor.

20 THE COURT: Good morning.

21 MR. EHRMANN: Daniel Ehrmann from Alvarez & Marsal.  
22 I'm primarily in charge of international operations at Lehman  
23 Brothers. What I thought I would do is merely point out to you  
24 a couple of sections of the presentation and then highlight a  
25 couple of points that are really the takeaways. I would like

1 to point you to pages 18 through 26. Those pages merely  
2 describe the multiple non-U.S. proceedings. As Your Honor is  
3 fully aware, we have about seventy-five proceedings. The  
4 territory that we consider covering are about 650 entities  
5 spread over a multitude of countries. And these pages will  
6 summarize for Your Honor the timeline of the various non-U.S.  
7 proceedings.

8 Pages 27 to 36 go into quite some detail of the  
9 actual timeline of the international operations people within  
10 the various territories and basically highlights month by month  
11 the progress that we have made. That timeline again is  
12 summarized on page 6. I think the takeaway there, Your Honor,  
13 is that when we started in September, we entered into a chaotic  
14 situation where 650 entities were subject to an unprepared  
15 bankruptcy filing. And all of the administrators in the  
16 various jurisdictions were trying to really determine what they  
17 had and ensure that they would set the stage in order to  
18 prepare themselves for phase two of this assignment. And I  
19 believe that today we actually are in this phase two which is  
20 going to be focused on asset realization and liabilities,  
21 assessment and management.

22 Page 7 summarizes the interactions we've had with the  
23 key -- what we qualify as the key administrators, i.e., those  
24 administrators that either cover most of the territories or  
25 most of the assets. I think that the relationships have



1 significantly evolved over the last four months. As I pointed  
2 out a minute ago initially in this assignment administrators  
3 were primarily focused on their own assets, their own  
4 territory, wanted to ensure that they would have access to  
5 resources, systems and information whereas today, I think  
6 they're all looking more outward in order to try and see this  
7 case to an end.

8 THE COURT: May I break in and ask a question --

9 MR. EHRMANN: Sure.

10 THE COURT: -- about that change?

11 MR. EHRMANN: Yep.

12 THE COURT: Is it implied by that comment that there  
13 is an attitude of cooperation which you have seen on a  
14 court-to-court and case-to-case basis in which there is a  
15 shared recognition that in order to better administer the cases  
16 that include interrelationships requires some level of  
17 formalized cooperation or is this just a hope?

18 MR. EHRMANN: I think that there's certainly been an  
19 evolution in approach. And it's interesting to see even the  
20 administrators that joined us at a later stage as a result of  
21 the proceedings taking place in local jurisdictions in the  
22 October/November/December time frame, they all go through the  
23 same process which is they are focused inwards and are very  
24 resistant or skeptical to -- with respect to a more formal  
25 cooperative approach. And I think as soon as they realize the

1 complexities and the interdependencies of this assignment, they  
2 are more amenable to a more cooperative approach. I would not  
3 go as far as saying that we will be able to deliver to you in  
4 thirty days a signed protocol, multilateral signed protocol. I  
5 think that would be hope.

6 THE COURT: That would be unrealistic.

7 MR. EHRMANN: That's exactly right. I think what's  
8 important to note, though, today there's an ongoing dialogue  
9 with every single administrator that we have identified in this  
10 case. And the degree of the dialogue, the depth of the  
11 dialogue differs obviously among these various administrators.  
12 We have made significant progress with PWC that is responsible  
13 for the LBIE and subsidiaries. We actually entered into a  
14 formal services agreement which includes information sharing  
15 and corporation provisions. While we have not been able to  
16 actually sign a more general broad protocol, we have many  
17 instances in which there is a real corporation and a real  
18 effort in order to assist other estates in their initiative.

19 We have had an evolving relationship with KPMG that's  
20 responsible for primarily the entities in Hong Kong and  
21 Singapore. We actually have there an informal protocol  
22 relating to asset management. The Hong Kong entities cover  
23 about six billion dollars of assets. And we've approached KPMG  
24 in asking them to allow us to help them assess those assets and  
25 work on disposition strategies relating to those assets in

1 order to ensure that the value is preserved for all of the  
2 estates and they have been very amenable to that.

3 So while the process may be slower than hoped for,  
4 there clearly is a real momentum among the different  
5 administrators. Unfortunately, there is no multilateral  
6 platform or forum that we have and these conversations are  
7 merely bilateral conversations.

8 THE COURT: Has this gotten to the level of  
9 approaching UNCITRAL?

10 MR. EHRMANN: Sorry, Your Honor?

11 THE COURT: Has this gotten to the level of  
12 approaching UNCITRAL? Do you --

13 MR. PEREZ: Yeah. We have not, Your Honor. We have  
14 not approached UNCITRAL to see if there would be any interest  
15 in doing something. Obviously, they have a form of protocol or  
16 a form of cooperation agreement which has been largely adopted  
17 in Chapter 15 and in other provisions.

18 THE COURT: I'm sorry. I didn't mean to ask a --

19 MR. EHRMANN: No. Please.

20 THE COURT: -- stumper question.

21 MR. EHRMANN: I'm a reformed lawyer so I should have  
22 known the answer.

23 THE COURT: Okay. So the answer is no.

24 MR. EHRMANN: The answer is no.

25 THE COURT: All right.

1 MR. EHRMANN: One other section I would like to point  
2 you to is section -- sorry -- page 10, Your Honor, and 11.  
3 This goes to the shift in needs relating to a protocol.  
4 Initially, in the first couple of months, we were primarily  
5 focused on a protocol relating to information sharing, data  
6 sharing, access to resources and asset preservation. And the  
7 fear was that as a result of these entities splitting up that  
8 basically the channel of communication and the repositories of  
9 information would basically lie only with certain  
10 administrators and we wanted to make sure that all of that  
11 information would be shared and that the approach with respect  
12 to the actual asset management would be somewhat consistent.

13 Obviously, today we feel that in most proceedings,  
14 the administrators have managed to stabilize their operations.  
15 Most administrators now have access to information, to  
16 resources. Most of them had actually inventoried their assets.  
17 And I believe that, for the most part, they are now ready to  
18 enter the second phase which is what do we now do with all of  
19 this and how quickly are we going to get there. And as, I  
20 think, Brian Marsal pointed out to you during the hearing of  
21 January 14th, we are obviously all dependent on each other in  
22 order to resolve, regarding the timeline, a resolution of these  
23 proceedings. And as a result of that, the needs have more  
24 become beyond maintaining the information corporation which, I  
25 think, is always welcome. The need is now more geared towards

1 coordination regarding proceedings, claims management  
2 coordination, intercompany relationship management and, as Your  
3 Honor will see when you will review our protocol, we have a few  
4 provisions regarding those needs.

5 THE COURT: Well, I did have a chance to read over  
6 the proposed cross border insolvency protocol this morning and  
7 I recognize that it has "Draft" stamped all over it and I view  
8 it as the start of a process, not necessarily the end of a  
9 process. But I was particularly impressed with the aims of the  
10 protocol set forth in Section 1.3 all of which, at least as I  
11 review it, appear to be reasonable, appropriate, desirable and  
12 necessary aims.

13 MR. EHRMANN: I would agree.

14 THE COURT: I thought you might.

15 MR. EHRMANN: And one last point I would like to  
16 make, and that's covered on page 12, we actually have attempted  
17 with the key administrators to actually agree to a more formal  
18 protocol back in October and November. That protocol only  
19 addressed the initial needs of the case. Notwithstanding  
20 multiple meetings and multiple drafts, we were never able to  
21 come to an agreement. And I think the key reasons behind that  
22 were that as time evolved, the need among those administrators  
23 with respect to information sharing, corporation, asset  
24 preservation reduced because on the ground those steps were  
25 actually being implemented. I think there's also a -- I'll

1 call it cultural difference maybe between our proceedings and  
2 other foreign proceedings where these protocols are viewed as  
3 maybe being in conflict with the administrative statutory roles  
4 and even potentially limiting their purview. And I just want  
5 to point out to Your Honor that while we are very excited to go  
6 out and have these bilateral conversations and negotiations in  
7 this initial round of -- or this initial attempt, we've seen  
8 that the resistance is strong to actually come to a formal  
9 protocol that actually has some teeth.

10 THE COURT: I'm not surprised.

11 MR. EHRMANN: Those are the key points I wanted to  
12 highlight to Your Honor unless you have any questions.

13 THE COURT: No. It's an extremely helpful report. I  
14 fully understand how ambitious an endeavor this is. But I also  
15 recognize the critical importance of the endeavor. And I'm  
16 satisfied, based upon my review, that as much progress is  
17 currently being made as can be expected.

18 MR. EHRMANN: Thank you, Your Honor.

19 MR. PEREZ: Your Honor, just by way of closing, thank  
20 you very much for allowing us to make the presentation. And we  
21 will seriously explore the possibility of engaging you into  
22 trial to see if that would be a way to do it.

23 THE COURT: I'm not urging that. I just asked the  
24 question because in the ordinary course of cross border  
25 insolvency, UNCITRAL has considerable credibility and

1 expertise. It's what they do.

2 MR. PEREZ: Yes, Your Honor.

3 THE COURT: And to the extent that other  
4 jurisdictions or others involved in cases pending in other  
5 jurisdictions have expressed resistance to the notion of a  
6 multilateral insolvency protocol that could be perceived as  
7 impinging in any way on sovereignty elsewhere, it seems to me  
8 that the involvement of a body such as UNCITRAL that routinely  
9 deals with harmonizing such differences simply may be a way to  
10 move the process forward at the appropriate time. But by no  
11 means in making these remarks am I urging anybody to do  
12 anything. And I recognize that this is a delicate exercise in  
13 international diplomacy as well as a delicate exercise in  
14 international insolvency.

15 MR. PEREZ: Thank you, Your Honor. And we'll  
16 obviously explore it and see if that leads to something.

17 THE COURT: Fine. Well, I'm most grateful for your  
18 report and I see this as something that I'll be learning more  
19 about over time.

20 MR. PEREZ: Thank you, Your Honor. May we be  
21 excused?

22 THE COURT: You may be excused.

23 MR. PEREZ: Thank you.

24 THE COURT: Mr. Flics, do you wish to comment?

25 MR. FLICS: Your Honor, if it's okay with the Court,

1 I thought it might be useful to make a couple of observations.

2 THE COURT: That'll be fine.

3 MR. FLICS: Thank you, Your Honor.

4 THE COURT: You better state your full name, however.

5 MR. FLICS: Martin Flics of Linklaters LLP, attorneys  
6 for the joint administrators of LBIE. Your Honor, we thought  
7 it might be useful in assisting the debtor in giving its report  
8 to the Court to provide some information and some observations  
9 if I could have just a few minutes to do so.

10 THE COURT: That'll be fine.

11 MR. FLICS: First, there has been in the course of  
12 the many months of this case now a number of times when I've  
13 stood up and there have been comments about the proceedings in  
14 the U.K. And we thought today was a good day perhaps to  
15 actually formally provide, in connection with the debtors'  
16 report, some documents to the Court and to file on the Court's  
17 docket so that people through the U.S. process could have some  
18 basic information about the U.K. proceedings. And so, we will  
19 be filing today some documents. And if I may approach, I'll  
20 just hand up to Your Honor, as a reference document, some of  
21 these.

22 THE COURT: Fine. You may approach. Thanks.

23 MR. FLICS: Your Honor, I don't propose to go through  
24 the documents that I've handed but, as I indicated, I think  
25 both for Your Honor and for parties in interest and to assist



1 the debtor in its report they would be useful to have. As  
2 noted, LBHI is a member of the creditors' -- I'm sorry, LBHI is  
3 a member of the creditors' committee of LBIE and in that  
4 capacity, gets substantial information about the LBIE  
5 proceedings.

6 But what I'd like to do in a few minutes is to cover  
7 a few key facts about the U.K. proceeding, the status, some of  
8 the differences with the U.S. proceeding and then offer some  
9 very basic observations about what we've been doing in our  
10 approach to some of the issues that are relevant to the report  
11 that you just heard.

12 First, Your Honor, the administration proceedings for  
13 LBIE and its related companies are the largest financially and  
14 most complex insolvency in the history of the United Kingdom.  
15 The balance sheet summary for LBIE as of September 15th, 2008  
16 from the records of Lehman disclose total assets of 591 billion  
17 dollars and total liabilities of 574 billion dollars. It was  
18 reported to the creditors of LBIE on November 14th that there  
19 were 495 billion in gross cash and securities assets and 485  
20 billion in gross cash and securities liabilities. That  
21 included intercompany assets and liabilities of 213 billion and  
22 208 billion, respectively.

23 As at January 15th, 2009, the administrators held a  
24 total of 5.9 billion dollars of cash of which 4.4 billion  
25 represented house funds and one and a half billion possible

1 client funds.

2 Now, Your Honor, with respect to the proceedings in  
3 the U.K., as has been mentioned on a number of occasions, on  
4 September 15th, a number of partners at Pricewaterhouse, Mssrs.  
5 Lomus, Pearson, Jervis and Schwartzmann were together appointed  
6 joint administrators. Subsequent to that time, a number of  
7 them, together with other PWC partners, were appointed joint  
8 administrators for eighteen other companies. In accordance  
9 with the provisions of the Insolvency Act, their legal status  
10 is that of agents of LBIE and officers of the court.

11 With respect to the court proceeding, Mr. Justice  
12 Blackburn has been assigned by the High Court of Justice as the  
13 judge with responsibility for hearing applications in relation  
14 to LBIE and the other Lehman entities subject to administration  
15 proceedings. Unlike the procedures in the U.S. bankruptcy  
16 court, the Insolvency Act does not require the U.K.  
17 administrators to have regular hearings and the administrators  
18 derive their powers and obligations from the Insolvency Act and  
19 the proposals for the administration of LBI that were approved  
20 by the creditors on November 14th. In fact, to date, there  
21 have only been two preliminary applications made by the joint  
22 administrators. And it is likely that there will be an update  
23 hearing in the coming months for the purpose of briefing the  
24 judge with respect to the joint administrators' plan to propose  
25 a scheme of arrangement for dealing with the distribution of

1 client assets and the trust property.

2 So I appreciate your hearing those points just to put  
3 that in context.

4 With respect to the cooperation and communication in  
5 the course of the case, we appreciate the comments of Mr.  
6 Ehrmann and Mr. Perez and the significant actions that are  
7 reflected in the presentation that they've made. In summary,  
8 there have been very significant aspects of cooperation with  
9 the desire of the administrators to employ a pragmatic approach  
10 to resolving issues as they arise under specific agreements.

11 And so, Your Honor has heard before about daily  
12 update calls. You've heard about the TSA. You've heard about  
13 LBHI's participation on the creditors' committee where Alvarez  
14 & Marsal has access to detailed analysis of the administration  
15 of LBIE, who has participated in meetings and so on.

16 With respect to matters relating to protocol, the  
17 word "protocol" in this case has been used in a number of  
18 contexts. It often is used to reflect an agreement. And in  
19 that capacity, we have been -- the administrators have been  
20 extremely active, both with LBHI in connection with the TSA and  
21 other matters, and also significantly with LBI and the SIPC  
22 trustee.

23 In the last six to eight weeks, in connection with  
24 the customer claims bar date, the administrators of LBIE and  
25 LBI and SIPC entered into an agreement to address some of the

1 enormous complexities in the filing of those claims. And in  
2 connection with that agreement, there was an agreement to  
3 agree, if you will, as to three further matters, such as the  
4 appropriate treatment of duplicative claims filed against LBI  
5 by LBIE and LBIE's clients, the appropriate treatment of claims  
6 that interplayed across product and across affiliate and  
7 inaffiliate netting of setoff rights, and seeking to best  
8 address differences in the U.S. and U.K. insolvency regimes in  
9 the claims process. So there's very significant activity along  
10 these lines.

11 I will have to say, though, Your Honor, in the spirit  
12 of openness, that as noted before, the administrators' approach  
13 is to deal with issues as they arise in a pragmatic and  
14 hopefully creative fashion. And I think they've been  
15 successful in doing so. With respect to issues of broader  
16 protocols and UNCITRAL, that is not the approach of the joint  
17 administrators at this time.

18 And while this is not the time for a legal argument,  
19 we've just been all indicating various types of precedents, I  
20 would note that ordinarily, at least certainly from the U.K.  
21 perspective, protocols have been entered into when the same  
22 legal entity has been the subject of proceedings in both  
23 jurisdictions. So the Maxwell example that's been cited a  
24 number of times was a case where a company filed in both the  
25 U.S. and the subject administration proceedings in the U.K.,

1 which creates an inherent conflict, because two courts have to  
2 deal with the same assets.

3 Contrary to that, or in distinction to that, Enron,  
4 which previously I think held the title of the most complex  
5 bankruptcy, also had a, of course, U.S. proceeding and an  
6 administration proceeding in the United Kingdom, where Enron  
7 was on the creditors' committee of Enron Europe. And in fact,  
8 several of the professionals involved in this very case were  
9 involved in that, including the joint administrators. And that  
10 actually worked quite well.

11 So I just wanted to be clear. Obviously, we're  
12 always willing to talk, but our approach is to continue to  
13 tackle these issues. We think we've been successful in  
14 tackling them on a pragmatic basis, and that is our intention  
15 as to how to continue.

16 THE COURT: Does this mean, Mr. Flics, that  
17 notwithstanding the comment made by Mr. Ehrmann that parties  
18 are starting to look outward, that your clients continue to  
19 look inward?

20 MR. FLICS: Well, Your Honor, I wouldn't characterize  
21 it as looking inward. I think we spent, as indicated, about  
22 two months working very closely with LBI, and we have agreed to  
23 continue to work closely with LBI. There are billions and  
24 billions of dollars of claims that need to be addressed that  
25 involve the U.S. and the U.K., LBI as well as LBIE has a very

1 strong interest that process. So I wouldn't say we're looking  
2 inward at all. What we're doing is addressing the important  
3 issues, clearly, from the perspective of the duties and  
4 responsibilities of the administrators of a U.K. entity that is  
5 subject to the laws of the United Kingdom.

6 I mean, Lehman Brothers set up its global enterprise  
7 by establishing entities subject to the laws of various  
8 jurisdictions, including the insolvency laws. Through no  
9 one's -- well, I don't know whether through anyone's fault, but  
10 as a result of the events of September 15th, and the inability  
11 to continue the enterprise and operation, those entities became  
12 separate, legally separate. And that is where we stand.

13 The administrators are doing their absolute best to  
14 discharge their duties and to cooperate for the benefit of  
15 their estate with the parties in this proceeding as  
16 appropriate. And I believe that that is benefited through the  
17 TSA and the LBI claims process entities in this proceeding.

18 THE COURT: Okay. Well, this isn't a public  
19 relations effort. This is just to report to the Court. As far  
20 as I'm concerned, everybody has reserved all rights, and I view  
21 what you said as just that, a reservation of rights.

22 MR. FLICS: Well, thank you, Your Honor, for giving  
23 me the time to do so.

24 THE COURT: Fine.

25 MR. FLICS: Thank you.

1 MR. KOBAK: If I may, Your Honor, I just have a  
2 couple of observations and a brief update. James Kobak for the  
3 SIPA trustee.

4 THE COURT: Now, just to be clear, this is in  
5 reference to the status report as it relates to the  
6 international aspects of the Lehman Brothers proceedings,  
7 correct?

8 MR. KOBAK: That's correct. But if Your Honor is  
9 willing, I also would just report how many claims we've  
10 received.

11 THE COURT: I'm perfectly willing. But it occurs to  
12 me, that, for agenda purposes, that I'd much rather hear that  
13 when we get to your phase of the agenda.

14 MR. KOBAK: Okay. That's fine, Your Honor. I just  
15 want to make two points. First of all, the trustee very  
16 strongly supports the goals that are set forth in paragraph 1.3  
17 which Your Honor referenced. I will say that in prior  
18 discussions, although there was agreement about the goals, when  
19 it came to crafting specific procedures, we did have some  
20 problems. I think with time some of those may go away. But  
21 so, there's a big step between agreeing on the general  
22 principles and really getting how things are going to operate.  
23 And our proceeding is a little bit different from some of the  
24 others because of the emphasis on prompt return of customer  
25 property and so forth. So there still are some issues out

1 there.

2 With respect to LBIE, I want to endorse everything  
3 that Mr. Flics said. We have been working very hard with him  
4 to try to deal with their claim on behalf of their clients, as  
5 well as their proprietary claims. I just want to -- I don't  
6 want to put him on the spot, but I do want to report that we  
7 have furnished him with a very extensive draft protocol that  
8 would deal with some of the issues that he referred to. I take  
9 it from a conversation I had with him in the hall earlier and  
10 from his remarks today, that the administrators may not be  
11 interested in doing anything quite that formal, but we're still  
12 hopeful that we might be able to discuss it and persuade them.

13 That would be essentially a bilateral protocol. We  
14 don't see that in any way as precluding also signing on to some  
15 kind of broader multilateral protocols if other parties will  
16 agree, or from taking our protocol with them and then adopting  
17 it for other procedures.

18 THE COURT: Well, I appreciate those remarks. I view  
19 your remarks and Mr. Flics' remarks as providing some  
20 visibility into what is really an entirely private negotiation.  
21 I think it best that this proceeding not become an opportunity  
22 to disclose too much about that private issue.

23 MR. KOBAK: No, I don't. And I do want to assure  
24 Your Honor that we have had a lot of discussions, as everyone  
25 has said, on the practical level of working together to resolve



1 the claims in some of the cross quarter issues.

2 THE COURT: I recognize that and I fully understand  
3 that there's an awful lot that I don't see and I don't know  
4 about, but only assume to be going on because of the nature of  
5 the case and its global complexities. One of the challenges,  
6 to state the obvious, is that there's no world bankruptcy court  
7 to deal with this issue.

8 MR. KOBAK: Yes.

9 THE COURT: And so everybody reserves their rights.  
10 We'll continue to proceed as we have been proceeding here under  
11 applicable U.S. law, and hopefully parties in interest will  
12 recognize that there is some value to cooperative joint action  
13 in a manner that doesn't impinge upon the jurisdiction or  
14 sovereignty of other pending proceedings, because there'll be a  
15 recognition of common purpose.

16 MR. KOBAK: Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. MILLER: Your Honor, Harvey Miller on behalf of  
19 the debtors in possession. Ultimately, Your Honor, this may  
20 turn out to be the prototype for a global multi-debtor  
21 bankruptcy system or process to deal with different  
22 corporations in different jurisdictions. We hope we get to  
23 that process. It was nice to hear from Mr. Flics, Your Honor,  
24 that the so-called issue of the eight billion dollars no longer  
25 seems to be at the forefront. That was such a big issue at the

1 beginning of this case.

2 Returning, Your Honor, to --

3 THE COURT: Did he actually say that?

4 MR. MILLER: He didn't say that, but I take silence.

5 Returning to the agenda, Your Honor. In connection with the  
6 LBHI et al. cases, there are no contested matters on today's  
7 calendar, Your Honor. Returning to --

8 THE COURT: Oh, anyone who wishes to leave is free to  
9 go.

10 MR. MILLER: -- agenda item number 4, Your Honor,  
11 which is the motion of Green Tree Servicing LCC in relation to  
12 the assumption of a subservicing agreement, the parties have  
13 reached an agreement, Your Honor, and a stipulation has been  
14 signed and will be presented to the Court for approval. Under  
15 that stipulation, LBHI will assume the agreement at issue and  
16 cure all defaults thereunder. The cure amount, Your Honor, is  
17 approximately 57,000 dollars. And that's to be paid within  
18 five days of the date that the order is entered.

19 THE COURT: That is actually the smallest number I've  
20 heard referenced in this case ever.

21 MR. MILLER: Well, Your Honor, we're trying to make a  
22 record someplace. With that, Your Honor, I would move on to  
23 item number 5, which similarly is uncontested. It is the  
24 motion of the Midwest Independent System Operator for relief  
25 from the automatic stay to exercise setoff rights.

1           The parties have agreed to lift the automatic stay so  
2           that they may reconcile the pre-petition claims between the  
3           parties. And during that process, Your Honor, the debtor-in-  
4           possession and Midwest Independent System Operator are  
5           reserving all rights, claims and defenses, including their  
6           rights to challenge the calculation of the amounts owing  
7           included in the netting calculations. So there's an agreement,  
8           Your Honor, that provides for netting. So a stipulation will  
9           be submitted, Your Honor.

10           THE COURT: Fine. And I take it that the  
11           documentation, both with respect to item 4 and item 5, is in  
12           process and will not be submitted today, but I can expect it in  
13           due course?

14           MR. MILLER: The documentation will be submitted at  
15           this hearing, Your Honor.

16           THE COURT: Okay. Fine.

17           MR. MILLER: And as to items 6 and 7, Your Honor, Ms.  
18           Marcus will handle those items.

19           MS. MARCUS: Good morning, Your Honor. Jacqueline  
20           Marcus, Weil, Gotshal & Manges, on behalf of LBI and the  
21           related debtors.

22           THE COURT: Good morning.

23           MS. MARCUS: Your Honor, since the January 14th  
24           hearing which was the last time you considered these two  
25           motions, the debtors have been continuing their efforts to

1 settle the disputes with respect to the open trades. With  
2 respect to the first open trades motion, which is item number 6  
3 on the agenda, the debtors have reached agreement with the  
4 following seven counterparties, each of which is reflected in a  
5 letter agreement that has previously been reviewed by the  
6 creditors' committee. Those parties are: Citibank NA,  
7 Citibank International, Goldman Sachs Credit Partners, Goldman  
8 Sachs International Bank, GS European Performance Fund Ltd.,  
9 KKR Debt Investors (2006) Ireland, and Whippoorwill Investments  
10 Inc. The debtors request that the Court enter an order in the  
11 form that we're going to submit at the conclusion of the  
12 hearing, or actually later today, that will approve those  
13 settlements.

14 The debtors had previously advised the Court that  
15 they have reached an impasse with both Field Point and Blue  
16 Mountain. And the Court has directed that we submit pretrial  
17 orders as to those parties. They are not quite finished yet,  
18 but we hope to be submitting pretrial orders with respect to  
19 those two shortly.

20 THE COURT: Let me ask you a question about those two  
21 exceptions to the rule of consensual resolution. Would some  
22 form of alternative dispute resolution mechanism save time and  
23 money? Or is it the view, based upon your having participated  
24 actively and personally in this, that you, in fact, are at such  
25 an impasse that having a judicial determination is the

1 necessary means to an end?

2 MS. MARCUS: I think that we need a third party's  
3 determination. Whether it has to be Your Honor or somebody  
4 pursuant to an alternative dispute resolution, I guess I'm  
5 neutral on.

6 THE COURT: Well, I would simply suggest that while  
7 you're talking with your adversaries about the form of what we  
8 call the pretrial order, even though it's a contested matter,  
9 that it might be useful to at least explore whether or not, for  
10 purposes of saving unnecessary administrative expenses that  
11 might otherwise be avoided, that the parties might be willing  
12 to submit to mediation.

13 MS. MARCUS: That's fine, Your Honor.

14 THE COURT: If not, this is not a direction to  
15 mediate. It's just a musing as to whether or not it's possible  
16 to give peace a chance.

17 MS. MARCUS: And actually, Your Honor's comments are  
18 relevant to the third party with whom we've reached an impasse,  
19 which is Avenue Investments. Avenue's counsel is here today,  
20 and they have suggested that perhaps some mediation or other  
21 alternative dispute resolution would be appropriate. So we'll  
22 definitely pursue that with them.

23 THE COURT: Okay. Are you counsel for Avenue?

24 MR. WAGNER: Yes, Your Honor. Jonathan Wagner from  
25 Kramer Levin. We did suggest to the debtor that we engage in

1 some form of alternative dispute resolution, as a matter of  
2 judicial efficiency and to save time and money for both the  
3 estate as well as the Court. And I believe it would be a most  
4 fruitful avenue. If not, or as part as the pretrial schedule,  
5 we will set that out both to address the legal and factual  
6 issues raised by the objection that was raised.

7 THE COURT: That sounds fine.

8 MS. MARCUS: Your Honor, that leaves with respect to  
9 the first open trades motion the following unresolved matters.  
10 The objection of AIB, which was almost done but not quite  
11 signed today. So we hope we'll have that signed within the --  
12 at the end of today. The objection of Deutsche Bank, with whom  
13 the debtors have had productive discussions and hope to reach  
14 an agreement. The objection of Lloyds TSB Bank as to which  
15 we're engaged in discussions. The objection of R3 Capital  
16 Management, which we may be able to resolve. And lastly, the  
17 objection of AXA Mezzanine II and MD Mezzanine SA, who have not  
18 been willing to engage in discussions, and with whom we will  
19 probably either litigate or engage in some type of alternative  
20 dispute resolution.

21 THE COURT: Well, if they're not willing to engage in  
22 discussions, it's going to be hard to mediate with them.

23 MS. MARCUS: Good point, Your Honor. With respect to  
24 the second open trades motion, which is item number 7 on the  
25 docket, there are two remaining counterparties: the Hartford

1 Funds and GE Fusion. With respect to the Hartford Funds, the  
2 debtors have just reached an agreement to settle that dispute,  
3 and that will be submitted this afternoon in a proposed order.  
4 The Hartford Funds are the Hartford Floating Rate Fund, the  
5 Hartford High Yield Fund, and Hartford High Yield HLS Fund.  
6 With respect --

7 THE COURT: May I -- I hate to interrupt. But just  
8 something occurs to me. Is there a settlement paradigm that  
9 has been established over time such that parties who are  
10 resistant to either discuss the matter or who have, for their  
11 own reasons just said no, can be pointed to what has become, in  
12 effect, industry standard?

13 MS. MARCUS: I believe that there's a paradigm, and  
14 that has been shared with some of the other counterparties as  
15 to the resolution of what was the major issue, which was the  
16 setoff issue.

17 THE COURT: Um-hmm.

18 MS. MARCUS: I'm fairly certain that these remaining  
19 parties don't have setoff arguments, but what they have is very  
20 fact-specific arguments about alleged terminations of the  
21 trades.

22 THE COURT: Okay. I was just --

23 MS. MARCUS: So as to those entities, it's not really  
24 feasible.

25 THE COURT: I was simply exploring whether there was

1 some governing principle that might be applied to these  
2 miscellaneous disputes to help get them resolved. If the  
3 answer is no, that's fine.

4 MS. MARCUS: I think with respect to the ones that  
5 are left, it will be difficult to --

6 THE COURT: Okay.

7 MS. MARCUS: -- come up with that.

8 THE COURT: Understood.

9 MS. MARCUS: With respect to the second motion, as I  
10 said, we've reached an agreement with Hartford and we'll submit  
11 that in an order later this afternoon. And the debtors and GE  
12 and Fusion have agreed to adjourn that objection until the  
13 February 25th hearing, except with respect to one trade, which  
14 is the debt of Llundell, which is the subject of a stipulation  
15 between LCPI and GE Fusion, which has been signed and will be  
16 submitted to the Court later today. That stipulation provides  
17 that that trade is terminated, not assumed not rejected. And  
18 that's where we are with respect to those motions. If Your  
19 Honor has any more questions?

20 THE COURT: No more questions. Thank you for that  
21 report.

22 MS. MARCUS: Thank you.

23 MR. MILLER: Your Honor, just jumping ahead, there  
24 are approximately twenty-one matters, Your Honor, on the  
25 adjourn list. Most of those matters, Your Honor, are being



1 adjourned to the next omnibus meeting, February 25th. Several  
2 are being adjourned to March 1st. One matter is being  
3 adjourned to next Tuesday, February 17th. That relates to the  
4 Utah Bank. And there's a motion filed today, Your Honor, in  
5 relation to the Thrift institution, a very similar motion,  
6 which I assume Your Honor will want to hear on the 17th?

7 THE COURT: Yes.

8 MR. MILLER: So, Your Honor, with respect to those  
9 matters, I don't think we have to do anything else to go  
10 through them other than to note that they've all be adjourned.

11 THE COURT: That's fine.

12 MR. MILLER: Then I would turn the lectern over to  
13 Mr. Kobak, Your Honor.

14 THE COURT: Fine. Thank you, Mr. Miller.

15 MR. MILLER: Thank you. And that includes the  
16 adversary proceedings, Your Honor. Those are all adjourned  
17 also.

18 MR. KOBAK: Thank you, Your Honor. James Kobak,  
19 Hughes, Hubbard & Reed, for the SIPA trustee. Mr. Wiltenburg  
20 is going to be handling most of the calendar. I did want to  
21 report briefly that the initial sixty-day period for people to  
22 file claims to get maximum SIPA protection, expired at the end  
23 of January. And I thought that you and the audience would be  
24 interested to know that we've received approximately 75,000  
25 claims. We don't have a dollar value on that yet, because many

1 of them are for securities rather than for a stated dollar  
2 value.

3 There are a number of them represented by Barclays  
4 and LBIE, as you heard. We worked out details of their filing  
5 an omnibus claim. So that's another 1,000. But it is a very  
6 substantial volume of claims which I suspect may keep us busy  
7 for some time. Although we have designed procedures with  
8 Deloitte and others to deal with them as expeditiously and as  
9 efficiently as possible.

10 THE COURT: Okay.

11 MR. KOBAK: And now I'll turn the podium over to Mr.  
12 Wiltenburg.

13 THE COURT: Thank you.

14 MR. KOBAK: Thank you, Your Honor.

15 MR. WILTENBURG: Good morning, Your Honor. David  
16 Wiltenburg, Hughes, Hubbard & Reed, representing James Giddens  
17 as trustee in the LBIE SIPA proceeding.

18 THE COURT: Good morning.

19 MR. WILTENBURG: Your Honor, we have, on the SIPA  
20 proceeding calendar, two uncontested matters, one matter that  
21 has become uncontested due to communications among counsel over  
22 the last few days, and a fourth matter that I think will remain  
23 contested this morning.

24 Item 8 on the uncontested list is the trustee's  
25 motion for entry of an order pursuant to Section 365 of the

1 Bankruptcy Code, assuming and assigning debtors' rights and  
2 obligations under a certain lease in Menlo Park, California.  
3 It's being assigned to an entity called Tenaya Capital LLC. No  
4 objections have been received, and we would propose that the  
5 motion may be granted.

6 THE COURT: It's granted.

7 MR. WILTENBURG: Item 9, Your Honor, will be  
8 presented by counsel for Barclays.

9 MR. BAREFOOT: Good morning, Your Honor. Luke  
10 Barefoot from Cleary, Gottlieb, Steen & Hamilton LLP, for  
11 Barclays Capital, here on the presentment of a stipulation and  
12 agreed order between Barclays and CA Inc., formerly known as  
13 Computer Associates, on the resolution of an objection they had  
14 to the assumption and assignment of an agreement between  
15 themselves and LBI to Barclays.

16 THE COURT: I saw a certification of no objection on  
17 the docket this morning.

18 MR. BAREFOOT: That's correct, Your Honor. That was  
19 filed because this was originally set up on notice of  
20 presentment. But because the presentment date was at the  
21 hearing, we, for convenience purposes, put it on the calendar  
22 for this morning.

23 THE COURT: Okay.

24 MR. BAREFOOT: No objections were filed. And  
25 consistent with your prior direction, I'll leave the

1 stipulation and the disk with the debtors.

2 THE COURT: Fine.

3 MR. BAREFOOT: Thank you, Your Honor.

4 MR. WILTENBURG: Your Honor, David Wiltenburg,  
5 Hughes, Hubbard & Reed. If I may, I'd like to address next  
6 item 11 on today's calendar, which is the motion pursuant to  
7 Bankruptcy Rule 9019 for approval of a settlement among the  
8 trustee, Barclays, and the clearing agency, the Depository  
9 Trust Corporation and its subsidiaries.

10 Your Honor, as set forth in the moving papers, this  
11 is another instance of securities transfers that did not take  
12 place as intended in the days immediately following the  
13 bankruptcy of LBI. In this instance, as events developed on  
14 the 22nd, which was the Monday after the Friday, it appeared  
15 that there was no financial institute or financially  
16 responsible party standing behind the obligations of LBI. And  
17 for that reason, it was agreed to wind down, that is, to  
18 essentially bring to an end, DTC's acting on behalf of LBI.

19 And that, in turn, led to -- or part of that process  
20 was reversal of a series, in fact a fairly extensive series, of  
21 so-called ACATs transactions, and those are transactions where  
22 a customer of LBI is seeking transfer of its securities and its  
23 account to another broker. Those requests had been coming, of  
24 course, in the aftermath of the bankruptcy at LBHI, and there  
25 was a substantial volume of that kind of transfer in process on

1 September 22nd.

2 Those transfers were reversed. And what that meant  
3 is that the securities that were kind of in motion on their way  
4 to other receiving brokers, were brought back by the CNS system  
5 that is administered by DTC and its subsidiaries. And those  
6 securities came to rest, or the ones that are the subject of  
7 this motion, came to rest in essentially two places. First,  
8 DTC detained two groups of -- what we've described in the  
9 motion as two groups of securities. One is the Exhibit A  
10 securities, which remain in the possession of DTC. And the  
11 second in that category are the Exhibit C securities that were  
12 detained and then liquidated by DTC. And as another category,  
13 there came into the position of the LBI account, another body  
14 of securities that has been described in the motion as the  
15 Exhibit B securities.

16 Again, when the dust settled, it turned out that  
17 Barclays needed the Exhibit A securities and the Exhibit C  
18 securities to satisfy claims of customers whose accounts had  
19 been transferred. So the settlement, broadly considered, tries  
20 to put us in the situation that would have prevailed if those  
21 ACATs securities had reached their intended destination on  
22 September 22nd, and in the following days.

23 And to make that happen, two things need to occur.  
24 The Exhibit A securities that remain in the possession of DTC  
25 must go to Barclays to be reunited with the customer accounts

1 that they are associated with. With respect to the Exhibit C  
2 securities which have been liquidated, those need to be bought  
3 back in if the customer claims are going to be satisfied. And  
4 we have some rough numbers to discuss in connection with that  
5 buy-in. And the way the agreement expresses the buy-in, it's  
6 called a make-whole payment, which will go to Barclays and then  
7 be used to buy the securities back.

8 The formal value of the securities on the 22nd was  
9 approximately 221 million dollars. Those securities were  
10 liquidated over the next couple of weeks. Proceeds were  
11 garnered in the amount of about 197 million dollars. And for  
12 clarification of what's in the 9019 application, those proceeds  
13 were applied to debts owing from LBI to DTC, debts resulting  
14 from the clearance and settlement activity on September 22nd  
15 and the following days.

16 Based on estimates that have occurred over the course  
17 of the ensuing months up to last Friday, it's believed that the  
18 current cost of buying them back will be about 170 million  
19 dollars. So if -- there are, of course, no guarantees. The  
20 market can move again. But if that estimate holds, the result  
21 will be a saving of approximately 26 or 27 million dollars for  
22 the estate, comparing the buyback cost with the proceeds that  
23 were credited, in effect, to the trustee's account at DTC.

24 Your Honor, we received two limited objections and  
25 comments on this proposed settlement, one from the debtor. And

1 as a result of communications we've had, further information  
2 and explanation that's been provided, that objection has been  
3 withdrawn.

4 THE COURT: The debtor objection has been withdrawn.  
5 That I saw this morning on the docket.

6 MR. WILTENBURG: Yes.

7 THE COURT: What's the status of the creditors'  
8 committee?

9 MR. WILTENBURG: The creditors' committee didn't  
10 style its response as an objection but reflected the fact that  
11 communication was occurring and was expected to continue to  
12 occur. And I hope I'll be able to report that the result has  
13 been satisfaction of the committee's concerns.

14 THE COURT: I think we're about to find that out.  
15 What's the committee position?

16 MR. TECCE: Good morning, Your Honor. James Tecce of  
17 Quinn Emmanuel on behalf of the committee. With the  
18 representations made on the record by Mr. Wiltenburg, our  
19 information requests have been answered. And we had asked that  
20 that be presented on the record, and it has. That resolves our  
21 first objection -- or our first concern, rather. Our second  
22 concern was just that the reservation of rights of the  
23 committee and the LBHI estates that appeared in the first  
24 settlement resolution with Chase back in December, that the  
25 same reservation of rights appear in connection with this

1 settlement with the same force and effect.

2 As the Court knows, we're investigating the sale  
3 transaction. We want to make sure that we have the same  
4 reservation that we obtained previously. And that was our  
5 second concern.

6 THE COURT: That's fine. I remember that reservation  
7 of rights, and you still have it as far as I'm concerned.

8 MR. TECCE: Thank you very much.

9 MR. MILLER: And the debtor also, Your Honor. The  
10 debtor?

11 THE COURT: You have it, too, Mr. Miller.

12 MR. MILLER: Thank you.

13 THE COURT: Thank you.

14 MR. WILTENBURG: Indeed, Your Honor, the form of  
15 order that's been tendered to the Court incorporates a parallel  
16 provision to the one that was entered on the prior occasion.  
17 So on that basis, Your Honor, I would request that the  
18 settlement be approved.

19 THE COURT: The settlement is approved.

20 MR. WILTENBURG: Your Honor, the next item on the  
21 agenda is the trustee's motion pursuant to Bankruptcy Code  
22 Section 365(d)(4) for extension of the trustee's time to assume  
23 or reject unexpired leases of nonresidential real property.  
24 And the Court is aware of the history of this. There were  
25 originally, I believe, six leases that were scheduled as leases



1 as to which this extension of the assume and reject deadline  
2 was sought. We had discussions and issues with one of the  
3 landlords with respect to that list. And it is the landlord of  
4 certain property located at 555 California Street in San  
5 Francisco.

6 And the issue that's been presented on the objection  
7 of that landlord, Your Honor, I think, as you'll see in the  
8 papers, we feel misconceives the effect of the Court's prior  
9 orders approving the asset sales to Barclays, and especially  
10 the portions approving the assumption and assignment of certain  
11 executory contracts. The Second Circuit tells us that there  
12 must be notice, a hearing and an order as a prerequisite to the  
13 assumption of executory contracts. That just didn't occur  
14 here.

15 There is no order of the Court that contemplates an  
16 assumption without assignment of this particular contract. For  
17 whatever reason -- I don't have insight into the minds of the  
18 negotiating parties -- they chose, after the sale hearing had  
19 occurred in this Court, to take that lease out of the scheme of  
20 leases that would be assumed and assigned, and kind of changed  
21 the rules as to that one, foreseeing an assumption in  
22 connection with a sublease instead of assumption and  
23 assignment.

24 That's a much different thing than had been noticed  
25 prior to that sale hearing. It's a different thing than the

1 Court approved in the sale approval order that had been  
2 entered, I think, originally on the 19th of September.

3 THE COURT: 20th.

4 MR. WILTENBURG: 20th. Your Honor, the papers review  
5 the legal arguments of the parties. I think we've tried to  
6 state the sequence of events and the applicable legal  
7 doctrines. If the Court has any questions, I'd be glad to  
8 address them.

9 THE COURT: No, I've reviewed the papers and I've  
10 reviewed the applicable case law. And I'm fairly well prepared  
11 to deal with this now.

12 MR. WILTENBURG: With that, I'll cede the podium to  
13 counsel for the landlord.

14 THE COURT: Let me ask you, before you cede the  
15 podium, you've talked about the deemed assumption issue in  
16 connection with the sale order, which you obviously say  
17 shouldn't govern here under the Burger Boys' authority from the  
18 Second Circuit. However, you haven't given me an argument why  
19 the time should be extended under 365(d)(4), at least you  
20 haven't done so orally on today's record. I assume that you  
21 stand on your papers with respect to that?

22 MR. WILTENBURG: I do, Your Honor. And I don't  
23 believe the landlord has joined issue on that point. That is,  
24 they're approaching this from a different point of view and I  
25 think not including that the legal standard applicable to

1 extension of time.

2 THE COURT: But they argue it's already been assumed?

3 MR. WILTENBURG: Correct.

4 THE COURT: I understand now. Okay. Thank you.

5 MR. WILTENBURG: Thank you, Your Honor.

6 MS. GOLDSTEIN: Good morning, Your Honor. Stephanie  
7 Goldstein, Fried, Frank, Harris, Schreiber & Jacobson on behalf  
8 of the landlord. We obviously take great issue with the  
9 debtors' statement that there's no order of the Court that  
10 contemplates the assumption without the assignment to Barclays.  
11 And I think there are a multitude of provisions within the sale  
12 order that are --

13 THE COURT: Let me stop you for a second.  
14 Procedurally, how do you get to the position you're seeking to  
15 get to in the context of objecting to this motion as opposed to  
16 bringing some other kind of proceeding before me? I just want  
17 to understand how you have the legal right to be making what  
18 appears to be a different kind of argument in the context of a  
19 365(d)(4) extension which is routinely granted under  
20 circumstances like this. I recognize you have a different  
21 legal position, but is your objection the right procedural  
22 means to present it to me?

23 MS. GOLDSTEIN: Your Honor --

24 THE COURT: And if so, why?

25 MS. GOLDSTEIN: -- Your Honor, our position on that

1 is that when the debtors made this motion to extend or assume  
2 and they included the lease at 555 California within the  
3 context of that motion, that we thought it was inappropriate  
4 that it be in there because they had already assumed the lease  
5 in the context of the sale order. And --

6 THE COURT: Are they acting as if they have assumed  
7 it, or are they acting otherwise?

8 MS. GOLDSTEIN: Until a couple of weeks before the  
9 extension motion was filed, until that point in time, they had  
10 been acting as if they had assumed the lease. And in fact, as  
11 set forth in the clarification letter on the 20th which says  
12 that on the closing date they were going to assume the lease at  
13 555 California, and in turn then sublease the premises to  
14 Barclays, which the lease required them to do, and then allowed  
15 Barclays to remain in the space and continue to use the space,  
16 we had thought they were in full compliance with the terms of  
17 the clarification order which is part of the purchase  
18 agreement, as defined in the sale order, as defined in the  
19 motions that were filed to approve the sale order.

20 And so we thought that was sort of a late stage  
21 change of strategy in terms of whether or not they were  
22 complying with what they had said they were going to do. And I  
23 think in that context, whether or not they can assume or reject  
24 as to a multitude of other leases that they took no position  
25 on, is not the issue. The issue here is whether or not in the

1 context of a specific lease that they said they were assuming  
2 on the closing date, and then got the Court's approval of all  
3 of the terms and provisions of the clarification letter which  
4 was incorporated into the purchase agreement, that there's  
5 nothing here for them to assume -- certainly to assume in the  
6 context of our lease.

7 Whether they can -- having assumed, whether they can  
8 now reject, I think is a separate issue. But the notion that  
9 they can then decide whether or not to assume a lease that they  
10 said they had already assumed on the closing date, we think  
11 isn't an issue, and is inappropriate to determine in the  
12 context --

13 THE COURT: I'm asking you a slightly different  
14 question. I understand that you have vigorously argued why you  
15 think you're right as a matter of law. I'm asking you the  
16 question as to whether you can properly do that in the context  
17 of objecting to a motion to extend under 365(d)(4)? And I  
18 haven't really heard an answer to that. What gives you the  
19 right to be making the argument you're making now in the  
20 context of objecting to an extension of time?

21 MS. GOLDSTEIN: I think in terms of standing, Your  
22 Honor, in terms of what the landlord's rights are in the  
23 context of the proceedings of the case, were we to then go  
24 ahead and not object at this point in time and make these  
25 points clear, no doubt, down the road someone would claim that

1 we had waived any objection to the fact that they were --

2 THE COURT: So --

3 MS. GOLDSTEIN: -- trying to assume or reject --

4 THE COURT: -- is this more in the nature -- excuse  
5 me. Is this more in the nature of a reservation of rights that  
6 you not be deemed to have waived your legal argument that the  
7 lease was already assumed? Or, are you in the context of this  
8 objection seeking what amounts to a determination that the  
9 lease has actually been assumed?

10 MS. GOLDSTEIN: Well, you know, not to talk in  
11 circles here on it. But I think in effect, that the landlord  
12 has a judiciable controversy when it learns of a position that  
13 the debtor is taking that's inconsistent with what we believe  
14 the state of affairs was to be, that we clearly have standing  
15 to object. And in terms of an extension application, it's  
16 clearly moot as to the landlord in terms of whether or not they  
17 have the right to extend the time to assume a lease that  
18 they've already assumed.

19 THE COURT: I understand. Well, obviously there's a  
20 difference of opinion, because the trustee and Barclays alike  
21 disagree with you mightily and say that you're wrong as a  
22 matter of law under applicable Second Circuit precedent, and  
23 that you're wrong as a matter of law fairly reading the sale  
24 order, and you're wrong as a matter of law fairly reading the  
25 clarification letter. So they say you're just plain wrong.

1 What I'm asking is are you right procedurally in being here now  
2 seeking what amounts to a determination that you're right in  
3 the context of objecting to an extension of time?

4 MS. GOLDSTEIN: I think it's implicit, Your Honor, in  
5 the notion of whether they can extend time to assume the lease,  
6 that they've already assumed the lease. And I'm not -- I  
7 understand we have a difference of opinion with the debtor in  
8 terms of what happened prior to their filing of this motion.  
9 But I certainly think in terms of whether or not their -- yes,  
10 it's generally a matter of course of whether or not you can  
11 extend that time within the context here.

12 The question is why are they entitled to extend time  
13 to assume a lease that they've already assumed. And implicit  
14 in that is the notion that why do we have to wait to figure out  
15 who's right and who's wrong when the issue has been joined  
16 and --

17 THE COURT: Well, it actually hasn't been, in my  
18 view. And I think that you're still not answering the  
19 question. I think you're trying hard to say because you think  
20 you're right, you should be deemed right. But what I'm telling  
21 you is that I think that there are other procedural means to  
22 determine who is right here. One would be a declaratory  
23 judgment adversary proceeding. That's one obvious means.  
24 Another would be some kind of motion to be brought in court  
25 here or elsewhere seeking to enforce the terms of the lease or

1 to seek to enforce the terms of the sale order and to take a  
2 position which actually gives you the right to get an order  
3 that grants you the relief you seek.

4 It's my view, procedurally, that you can't get there  
5 from where you are right now, although you have very  
6 emphatically and in florid language sought to say why you're so  
7 right and why this is such an injustice. I think you actually  
8 overpled your case. That's just my opinion.

9 I am governed, ultimately, by Second Circuit  
10 precedent, and I don't think this is the proper procedural  
11 setting in which to argue Burger Boys. But you know it and I  
12 know it. It's the law. I am granting the trustee's motion  
13 under 365(d)(4) without prejudice to any rights that your  
14 client may have with respect to the status of the lease at 555  
15 California Street.

16 I understand that you have forcefully argued your  
17 client's belief that that lease has been, in fact, already  
18 assumed. In extending the 365(d)(4) period, I do so without  
19 prejudice to that legal argument. And so the parties are free  
20 to argue in a proper procedural setting, and I view this as  
21 improper, those rights that actually exist under the sale order  
22 entered on September 20th.

23 So to the extent that what you did was a fairly thin  
24 reservation of rights, I accept it as such. To the extent what  
25 you did was an attempt to get a determination that you in fact



1 have an assumed lease, it's the improper procedural vehicle to  
2 do so, in my view. And you're not getting a determination as  
3 to that today.

4 MS. GOLDSTEIN: Thank you, Your Honor.

5 THE COURT: Does anyone else wish to be heard on this  
6 issue? Fine.

7 MR. MILLER: Your Honor, I believe that concludes the  
8 calendar.

9 THE COURT: Okay.

10 MR. MILLER: Your Honor, there's just one other thing  
11 that I'd just point out. There was a motion filed by 25 Broad  
12 LLC for leave to conduct 2004 examinations. That motion's been  
13 withdrawn, Your Honor.

14 THE COURT: Okay. And I'm not sure who I will see on  
15 the 17th, but I will see some people on the 17th, and --

16 MR. MILLER: Definitely, Your Honor.

17 THE COURT: -- I'm not sure who from this group will  
18 be here, but I look forward to seeing you at 10 a.m.

19 MR. MILLER: Thank you very much, Your Honor.

20 THE COURT: Thank you. We're adjourned.

21 (Whereupon these proceedings were concluded at 11:35 a.m.)  
22  
23  
24  
25

I N D E X

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DESCRIPTION	PAGE	LINE
Order authorizing the retention of Jenner & Block as counsel for the examiner approved	16	6
Motion authorizing the issuance of a subpoena pursuant to Rule 2004 approved	16	12
Examiner's proposed preliminary work plan for purposes of investigation approved; debtors' objection overruled	27	16
Motion of Green Tree Servicing LCC in relation to the assumption of a subservicing agreement approved	50	19
Motion of the Midwest Independent System Operator for relief from the automatic stay to exercise setoff rights approved	51	16

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DESCRIPTION	PAGE	LINE
Trustee's motion for entry of an order pursuant to Section 365 of the Bankruptcy Code, assuming and assigning debtors' rights and obligations under a certain lease in Menlo Park, California	59	6
Presentment of stipulation and agreed order between Barclays and CA Inc. on resolution of objection to assumption and assignment of agreement between themselves and LBI to Barclays granted	60	2
Motion pursuant to Bankruptcy Rule 9019 for approval of a settlement among the trustee, Barclays, and the clearing agency, the Depository Trust Corporation and its subsidiaries approved	64	19

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DESCRIPTION	PAGE	LINE
Trustee's motion pursuant to Bankruptcy Code	72	12
Section 365(d)(4) for extension of the trustee's		
time to assume or reject unexpired leases of		
nonresidential real property granted without		
prejudice to rights of landlord with respect		
to status of lease at 555 California Street		

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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LISA BAR-LEIB

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Date: February 12, 2009